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EXAMINER

BLAIR, DOUGLAS B

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2442

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/666,888	Applicant(s) XUE ET AL.	
	Examiner DOUGLAS B. BLAIR	Art Unit 2442	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 29-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 and 29-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 3/25/2011 have been fully considered but they are not persuasive.

As to the argument against the rejection of claims 29-34, the applicant's arguments are not persuasive. The applicant seems to be confusing enablement with written description. The Examiner is not rejecting claims 29-34 because they are not enabled. The Examiner is rejecting claims 29-34 because did not originally claim or disclose any content control circuit that is configured to increase the subscriber version number. Such a limitation first appeared in the amendment filed on 4/13/2010. The purpose of the written description requirement is to prevent applicants from seeking patent protection for a concept that was not originally disclosed regardless of whether or not someone of skill in the art would be able to make or used the claimed invention. In the instant case, the applicant did not originally claim or disclose any content control circuit that is configured to increase the subscriber version number and therefore cannot seek to patent such subject matter.

When addressing the arguments against a prior art rejection it is important to consider the subject matter which the applicant is arguing is patentable. The applicant's sole argument is that the prior art does not teach downloading content if a subscriber version number is found to be less than the version number during synchronization verification. The applicant does not argue any other limitations being rejected are not taught by the prior art. The idea of the patent system is to provide the patentee with patent protection in exchange for provide with the public with a

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disclosure that puts the public into possession of information that increases the public's knowledge about the state of the art.

In the current application, the concept that the applicant is arguing is patentable would be obvious to anyone with an elementary school level math education. The applicant is doing nothing more than comparing numbers to see which is larger and incrementing a number. These are basic concepts that do not advance the state of the art and would clearly be obvious to one of ordinary skill when considering the teachings of Fletcher, which otherwise discloses the rest of the applicant's invention.

After reviewing the Nakagawa reference and updating a search of the prior art, the Examiner has found the Kullick reference which does a better job at illustrating how claims are not patentable than Nakagawa. Specifically, in Nakagawa once the software with the higher version is downloaded, the older versions can still be kept whereas in Kullick, once the software with the higher version is downloaded, the older software is discarded. Therefore, Kullick shows incrementing a subscriber version number because when the new higher version replaces the older version, the subscriber's version is inherently incremented. In other words, it would make no sense to download the higher version but then rename it to the older version; the Kullick invention would not work in such a scenario. Kullick also explicitly shows downloading content if the subscriber version is found to be less than the version number (col. 4, lines 33-56 and especially col. 4, lines 48-50).

In summary, the Examiner does not see any disclosure provided by the applicant that is not shown in the references and advances the state of the art. Therefore the Examiner sees no patentable subject matter present in this application and has treated the claims accordingly.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 29-34 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 29 specifies that the content control circuit is configured to increase the subscriber version identifier. This configuration of the content control circuit was not disclosed in the applicant's originally filed disclosure (see page 13, lines 11-23). Though the applicant's specification does support increasing the subscriber version identifier, the applicant's specification is silent as to any circuitry performing this action.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1-14, 29-31 34-41, and 44-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 6,009,274 to Fletcher et al. in view of U.S. Patent Number 5,765,992 to Kullick et al. and U.S. Patent Number 5,835,911 to Nakagawa et al.

As to claim 1, Fletcher teaches a version based content distribution system comprising: content comprising a version; a syndicator (**the ASU server**), wherein the syndicator is configured to transmit the version (**col. 10, lines 18-51**); subscriber content comprising a subscriber content version (**col. 10, lines 53-56, the components being run by the agents are the subscriber content**); and a subscriber (**the ASU agent**) configured to store the subscriber content, to compare the version with the subscriber content version (**col. 10, lines 53-56**), and to receive the content from the syndicator if the syndicator version number indicates a newer version (**col. 10, lines 56-67**); wherein the syndicator is remote from the subscriber (**col. 5, lines 6-25**); however Fletcher does not explicitly state that a newer version has a higher number nor does Fletcher explicitly teach increasing the subscriber content version number once a download occurs.

Kullick teaches the concept of assigning a new or updated piece of software with a higher version number (**col. 4, lines 48-50**) and increasing the content version number once a download occurs (**col. 5, lines 17-23, the newly downloaded file replaces the old one and therefore the current version is incremented as broadly claimed**). Kullick teaches the concept of downloading content if the subscriber version number is found to be less than the version number available for download (**col. 4, lines 33-56**); Kullick does not explicitly teach that the "higher" version number is incremented. Nakagawa teaches making a software version higher by incrementing it (col. 37, lines 13-18).

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It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of Kullick regarding increasing a Software version number with the teachings of Nakagawa regarding incrementing because incrementing is one such way to make a software version "higher" as explicitly stated by Nakagawa.

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of Fletcher regarding pulling a software update after receiving a notification of a new version with the teachings of the Kullick-Nakagawa combination regarding the use of escalating numbers for version management because the specific versioning discussed by Kullick would fit the broader disclosure of versioning discussed by Fletcher without any changes to the inventive concept of Fletcher.

As to claim 2, the ASU server is clearly a server.

As to claim 3-6, see col. 1, lines 42-64 of Fletcher.

As to claim 7-10, see col. 10, lines 18-67 of Fletcher qualifies as the claimed transfer methods. The use of version numbers is obvious as explained in the rejection of claim 1.

As to claim 11, see col. 1, lines 11-64 of Fletcher.

As to claim 12, see col. 11, lines 7-10 of Fletcher.

As to claims 13 and 14, see col. 11, line 64-col. 12, line 18 of Fletcher.

As to claim 29, it is rejected according the rationale used to reject claim 1. The ASU server is the claimed server and the ASU agent is the subscriber. The embodiments of Fletcher and Kullick are implemented via computers and therefore cover the broadly disclosed circuitry claimed by the applicant.

Claims 30 and 34 are rejected for the same reasoning as claim 1.

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As to claims 31, 40, and 48, Kullick teaches a version identifier comprising a date and time stamp (col. 4, lines 34-56).

As to claim 35, Fletcher teaches a method of distributing content comprising: defining a version for content stored on a computer readable storage medium within a syndicator (**col. 10, lines 18-67, see the mapping provided in claim 1**); updating the content within the syndicator (**col. 10, lines 18-67**); defining a version for content stored on a computer readable storage medium within a subscriber, wherein the subscriber is remote from the syndicator (**col. 5, lines 6-25**); transmitting the version from the syndicator to the subscriber; performing a synchronization verification wherein the subscriber version is compared to the syndicator version (**col. 10, lines 18-67**); downloading the content stored within the syndicator to the subscriber if the subscriber version is found to be older than that of the syndicator version during the synchronization verification (**col. 10, lines 18-67**); however, Fletcher does not teach increasing a syndicator version number after a download, Fletcher does not explicitly state that a newer version has a higher number nor does Fletcher explicitly teach increasing the subscriber content version number once a download occurs.

Kullick teaches the concept of assigning a new or updated piece of software with a higher version number (**col. 4, lines 48-50**) and increasing the content version number once a download occurs (**col. 5, lines 17-23, the newly downloaded file replaces the old one and therefore the current version is incremented as broadly claimed**). Kullick teaches the concept of downloading content if the subscriber version number is found to be less than the version number available for download (**col. 4, lines 33-56**) ; Kullick does not explicitly teach that the

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"higher" version number is incremented. Nakagawa teaches making a software version higher by incrementing it (col. 37, lines 13-18).

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of Kullick regarding increasing a Software version number with the teachings of Nakagawa regarding incrementing because incrementing is one such way to make a software version "higher" as explicitly stated by Nakagawa.

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of Fletcher regarding pulling a software update after receiving a notification of a new version with the teachings of the Kullick-Nakagawa combination regarding the use of escalating numbers for version management because the specific versioning discussed by Kullick would fit the broader disclosure of versioning discussed by Fletcher without any changes to the inventive concept of Fletcher.

Claims 36-39 and 41 are rejected for the same reasoning as claim 1's dependents.

As to claim 44, it is similar to claim 35 with the difference being a reception act instead of a transmitting act. The cited embodiment of Fletcher teaches the reception act.

Claims 45-47 and 49 are rejected for the same reasoning as claim 1's dependents.

Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 6,009,274 to Fletcher et al. in view of U.S. Patent Number 5,765,992 to Kullick et al. and U.S. Patent Number 5,835,911 to Nakagawa et al. in further view of U.S. Patent Number 6,990,498 to Fenton et al.

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As to claims 15-17, the Fletcher- Kullick-Nakagawa combination teaches claim 1; however the Fletcher- Kullick-Nakagawa combination does not discuss the use of a tree structure.

Fenton teaches the tree structure claimed in claims 15-17 (See Abstract for example).

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of the Fletcher- Kullick-Nakagawa combination regarding the distribution of content by comparing version numbers with the teachings of Fenton regarding a tree structure because a tree structure is an efficient method for providing data to users.

Claims 18, 19, 32, 33, 42, 43, 50, and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 6,009,274 to Fletcher et al. in view of U.S. Patent Number 5,765,992 to Kullick et al. and U.S. Patent Number 5,835,911 to Nakagawa et al. in further view of U.S. Patent Number 6,493,748 to Nakayama et al.

The Fletcher- Kullick-Nakagawa combination teaches the subject matter of the independent claims including executable files see col. 1, lines 12-16 of Fletcher; however Fletcher does not teach media files.

Nakayama teaches a version management system for managing media files (See Background).

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of the Fletcher- Kullick-Nakagawa combination regarding the distribution of content by comparing version numbers with the teachings of

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Nakayama regarding media filed because the media files fall within the broadly disclosed executable files disclosed by Fletcher.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 6,009,274 to Fletcher et al. in view of U.S. Patent Number 5,765,992 to Kullick et al. and U.S. Patent Number 5,835,911 to Nakagawa et al. in further view of U.S. Patent Number 6,119,165 to Li et al.

As to claim 20, the Fletcher- Kullick-Nakagawa combination makes obvious claim 1; however the Fletcher- Kullick-Nakagawa combination does not explicitly teach a proxy as claimed in claim 20.

Li teaches a proxy as claimed in claim 20.

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of the Fletcher- Kullick-Nakagawa combination regarding the distribution of content by comparing version numbers with the teachings of Li regarding using a proxy in a separate computer because a proxy allows a client to access the internet using a singular portal (Background of Li).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DOUGLAS B. BLAIR whose telephone number is (571)272-3893. The examiner can normally be reached on 9:00am-5:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess can be reached on (571) 272-3949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Douglas B Blair/
Primary Examiner, Art Unit 2442